

Bl wherein each end element has a spherical form, the diameter of which is adapted to the palm of the hand of a training person, with a non-discontinuous spherical surface remote from said [rod-like] intermediate element, a turning region and a conversely concave region on its side toward said [rod-like] intermediate element, said turning region making a steady transition into said conversely concave region, [and] wherein said conversely concave region making a steady transition to said [rod-like] intermediate element, and wherein the total length of the training apparatus is approximately in the range of the length of the shoulder span of the person using it.

Claim 15, line 3, delete "rod-like."

#### REMARKS

The rejection of claim 12 as indefinite because of the recitation of "rod-like" is noted. In reply thereto, claim 12 has been amended to change "rod-like" to "an intermediate member formed as a rod." A corresponding amendment has been made to claim 15. The rejection based on indefiniteness should therefore be withdrawn.

The rejection of claims 12, 15, 16, 22 and 23 as anticipated under 35 USC 102(b) over Bosko et al is noted and respectfully traversed.


For 35 USC 102 to apply, each and every positively recited limitation in a claim must be identically shown in a single reference. See, *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990). Claim 12, prior to being amended, included the following limitation not found in Bosko et al, "wherein said conversely concave region making a steady transition to said intermediate element." This limitation cannot be found in Bosko et al where no transition is disclosed to the intermediate region. Accordingly, Bosko et al cannot anticipate claims 12, or any of the claims

which depend therefrom. And as now amended, claim further distinguishes, in the sense of 35 USC 102 over Bosko et al. As amended, claim 12 recites that "the total length of the training apparatus is approximately in the range of the length of the shoulder span of the person using it." This limitation is not and cannot even be envisioned by Bosko et al, or any person skilled in the art from viewing Bosko et al because Bosko et al's purpose is entirely different from that of the present invention. Bosko et al discloses a dumbbell with members 32 and 33 that are filled with water. according to Bosko et al's guidance the person using the device grasps the device at the bar 12, the way a dumbbell is normally handled and not at the two ends. With the present invention the two ends are grasped. Claim 12 as amended now includes the recitation that the diameter of each end element is "adapted to the palm of the hand of the training person." There is no reason for doing this in Bosko et al. Also, in Bosko et al, the two ends do not have a "non-discontinuous spherical surface" because they have openings for adding water

The limitation noted above in claim 12 as amended is derived from claim 13. As such the rejection of claim 13 as unpatentable under 35 USC 103(a) over Bosko et al in view of Jackson, Jr. is also respectfully traversed. Bosko et al does not teach the "total length" feature noted above. The examiner refers us to column 2, line 22 of Jackson, Jr. This recitation tells us only that the center sleeve 13 has "the approximate width of the human body," not that the "total length." The "total length" limitation is not found in either Bosko et al or Jackson, Jr. See *In re Jones*, 21 USPQ2d 1941 (Fed. Cir. 1992). See also *In re Gordon*, 221 USPQ 1125 (Fed. Cir. 1984). Even assuming that the device disclosed in Bosko et al could be modified by referring to Jackson, Jr, obviousness does not necessarily follow because a suggestion for the modification must exist in either Bosko et al or Jackson, Jr., and none does.

In view of the foregoing, reconsideration and re-examination are respectfully requested and claims 12 and 14-23 found allowable.

Respectfully submitted,



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